IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7058 OF 2005

Mrs. Sharmila Santosh Mhatre ..Petitioner.

Versus

The Returning Officer
Grampanchayat Dive (Anjur) & Ors. ..Respondents.

Mr.Sandesh D.Patil & Mrs.A.S.Gauri for the Petitioner.
Mr. D.A.Patil, AGP for Respondents Nos. 1 to 3.
Mr. R.V.More for Respondent No.4.
Mr. Anilkumar Patil for the Respondent No.5.

CORAM : S. A. BOBDE, J.
DATED : 17TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. Patil, AGP for the Respondent Nos. 1 to 3, Mr. More, Advocate for the Respondent No.4 and Mr. Anilkumar Patil for the Respondent No.5, appear and waive service of rule. Heard by consent.

2. By this petition, the petitioner has challenged the acceptance of the nomination Form of the respondent No.5. According to the petitioner there were three lady candidates who had submitted their names for election as member of the village Dive (Anjur). The petitioner further contends that since

one candidate having withdrawn, she and another candidate were the only candidates for the seat reserved for ladies. However, according to the petitioner the respondent No.5 has submitted a nomination Form in the general category meant for ladies. Her nomination has been wrongly accepted in the seat reserved for the ladies category. The petitioner submitted that if respondent No.5's name is excluded, the petitioner is entitled to be declared elected un-opposed and therefore, questioned the acceptance of the nomination Form of the respondent No.5 in the ladies category as a candidate for the seat reserved for the ladies category. The learned counsel for the petitioner relied on Exh.'B'dated 10.10.2005 in which the list of candidates was submitted. The nomination form showed the candidature of the Respondent No.5 as a candidate in the general ladies category. According to the petitioner Exh. 'C' which is the same Form issued on the same date, showing the respondent No.5's candidature as a candidate for the seat reserved for ladies in the general category, is a fabricated document and the word "reserved" is an interpolation. This contention obviously raises a serious dispute of the fact which cannot be resolved in a writ petition. In fact the learned counsel for the respondent states that there

is no real difference between the two Forms at Exh.'B' and Exh.'C', since the moment a candidate is shown as belonging to the ladies category, which refers to her candidature in the reserved category. I do not propose to decide this issue since this also can be best adjudicated in the appropriate forum.

3. In this view of the matter and having regard to the decision of the Division Bench of this Court in Kalpana Ananda Sutar vs. State of Maharashtra, reported in 1998 (2) Mh.L.J.-626, which has rendered a finding on this very aspect that the remedy to challenge the decision of the returning officer for rejection or acceptance of nomination form is only by way of an election petition under section 15, I am of view that the petitioner should be relegated to the remedy of filing an election Petition, if so advised, which shall be decided in accordance with law.

4. Rule is disposed of in the above terms.

DT. 17.10.05 (S.A.BOBDE,J)

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